

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4474 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL HIRABEN MANILAL

Versus

SECRETARY

Appearance:

MR CC BHALJA for Petitioner
MR TH SOMPURA, A.G.P. for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
MR PRASHANT G DESAI for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/12/96

ORAL JUDGEMENT

Petitioner is the owner of the land bearing survey Nos. 392, 394/1 and 394/2 situated at Vasna. Under Town Planning Scheme No.26, said lands have been reserved for "public housing" under sec.12(2) (K) of the Gujarat Town Planning and Urban Development Act, 1976 [hereinafter referred to as "the Act"]. A Notification

of reservation under the Act was issued on 16th September, 1983. It appears that the said lands were not acquired or used for the purpose for which it were reserved for 10 years. The petitioner, therefore, on 25th August, 1995 July, 1995, served a notice under sec.20(2) to appropriate authority requiring it to acquire the lands. In spite of the said notice, the appropriate authority failed to take any step to acquire the said lands either by agreement or under the Land Acquisition Act, 1894. The petitioner has, therefore, preferred this petition for declaration that the reservation of the said lands under the Town Planning Scheme published on 16th September, 1983 has lapsed.

2. The matter at issue in this petition is no more res - integra. The Hon'ble Supreme Court in the matter of Ahmedabad Urban Development Authority v. Manilal Gordhandas and others [JT 1996 (8) SC 646], has decided the point at issue against the land owners. The Court has held that the draft development plan which was sanctioned and notified on 2.11.1987 shall be deemed to be the final development plan within the meaning of section 20 of the Gujarat Town Planning Act. As such, period of ten years has to be calculated and counted with reference to 3rd December, 1987 the date when such final development plan was to come into force.

In view of the above decision, the final development plan having come into force on 3rd December, 1987, the petitioner could not have invoked the provisions of section 20(2) of the Act before the expiry of ten years from 3.12.1987. Thus, the notice given on 25th August, 1995 was premature and no declaration can be given as is prayed for by the petitioner.

In the event, this petition fails. Petition is dismissed. Rule is discharged. There shall be no order as to costs.

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